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*Via Electronic Filing*

Chairman Michael Powell  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: *Ex Parte* Presentation: Improving Public Safety  
Communications in the 800 MHz Band  
WT Docket No. 02-55**

Dear Chairman Powell:

The purpose of this letter is to express the opinion of the United Telecom Council (UTC) and its many utility members that will be impacted by the FCC's decision in the above-referenced matter. UTC and the utility community have been active in this complicated and difficult proceeding since its inception, and take this opportunity to comment on recent reports and filings by various parties.

To begin with, UTC reiterates its opposition to the forced migration of any 800 MHz licensee for changes that, in the final analysis, will benefit only one entity to any substantive degree. All parties agree that updated technical standards are and will continue to be needed in the 806-824/851-869 MHz band to ensure that harmful interference does not threaten the safe operation of communications systems by all licensees. This remains true regardless of whether rebanding is mandated in this proceeding. UTC therefore urges the Commission to implement new technical rules for the 800 MHz band, preferably those offered in the 800 MHz User Coalition's Balanced Approach,<sup>1</sup> and give these standards a chance to eliminate current and future interference. Rebanding would remain an option should it be necessary.

**If political pressures are too great to permit postponing the enormous disruption of rebanding, your decision must ensure continued safe operations for public safety and critical infrastructure licensees.** UTC and its members are increasingly concerned that the framework of the Commission's decision in the 800 MHz proceeding will cause unnecessary and unacceptable harm to critical infrastructure operations. UTC agrees completely with the *ex*

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<sup>1</sup> *Ex Parte Presentation*, Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, 800 MHz User Coalition, submitted May 29, 2003.

*parte* submission by Consumers Energy Company and Entergy Corporation, filed June 22, 2004, notably the statement: "[t]he Utilities reiterate their position that, because of the public safety nature of their communications at 800 MHz, they should not be compelled to relocate into bands that would be subject to either higher levels of interference from Nextel or subject to a greater probability of interference."

Nextel Communications, Inc.'s (Nextel) recent "offer" of additional spectrum at 816-817/861-862 MHz raises more problems than it solves. As pointed out by other parties in this proceeding, this spectrum cannot be considered comparable to the rest of the frequency band, in that it is both adjacent to Nextel's intensive low-site system and Nextel's offer does not include adequate interference protection for other licensees. As Nextel itself noted, these indeed are frequencies that "may not be optimum assignments for mission-critical public safety communications." Few incumbent licensees will be willing to relocate there; and should they decide to do so, both the complications and the costs of rebanding will only increase.<sup>2</sup>

UTC also is concerned that this additional spectrum may be being contemplated as a means of addressing the needs of licensees – whether public safety, critical infrastructure or commercial – already using advanced technology through their own low-site systems. If such is the case, the Commission should be warned that this is not a forward-looking solution, but like rebanding itself, only accommodates the moment. **Utilities and other licensees must have flexibility throughout the frequency band to improve spectrum efficiency and migrate to advanced technology -- including cellular architecture -- when and as needed.**

As stressed by the First Responder Coalition in its recent statement, the Consensus Plan is not an aid to improved communications: "[g]uised as an effort to help public safety departments eliminate interference problems in their communications systems, Nextel is waging a multi-million dollar campaign which is diverting attention and possible resources away from the real issue of communications interoperability."<sup>3</sup> UTC agrees, and would emphasize again that the emergency response community, which includes utilities, must have flexibility to continue to implement interoperable communications solutions. Unless the Commission is planning to allocate additional spectrum to private land mobile services very soon, the Commission must implement a solution in the 800 MHz band that recognizes the vital importance of this spectrum to thousands of private licensees, especially utilities and other critical infrastructure entities that have been deemed "public safety radio services" but have no dedicated spectrum in which to construct much-needed upgraded communications platforms.

UTC also remains extremely concerned about the rebanding process and the adequacy of funding available for it. **UTC supports fully those elements of the Compromise Plan offered by the Cellular Telecommunications and Internet Association (CTIA) urging a minimum of \$3 billion in funding for the rebanding process**, regardless of the eventual decision concerning the "market value" of any "replacement" spectrum. UTC also urges adoption of incentives to encourage Nextel to move forward expeditiously and in good faith to complete rebanding. UTC member entities have repeatedly expressed their concerns over the inevitable disruption of critical communications during the rebanding process, and unlike public safety

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<sup>2</sup> UTC agrees with similar arguments made by Verizon Wireless in its recent *ex parte* submissions; see, Letter from R. Michael Senkowski to Marlene H. Dortch (June 9, 2004) and Letter from R. Michael Senkowski to Marlene H. Dortch (June 16, 2004).

<sup>3</sup> First Responder Coalition White Paper, released June 24, 2004.

systems, some affected utility systems cover multiple states. The costs and the difficulties of this process will be enormous, and given Nextel's constant pressure on utilities to hand over their 800 MHz spectrum (as well as frequent instances of Nextel interference with utility communications), the carrier's business practices are suspect. **As CTIA recommends, replacement spectrum licenses should be granted to Nextel only on a market-by-market or region-by-region basis, after the satisfactory completion of rebanding in that region.** As UTC, CTIA and others have repeatedly stressed, the primary goal of this proceeding is to resolve interference, and this should be the primary focus of the Commission's decision.<sup>4</sup>

Mr. Chairman, we share the Commission's commitment to cure the interference problems plaguing traditional public safety agencies as well as our own systems; however, we genuinely believe there are means of doing so without harming members of the emergency responder community to guarantee the future of only one commercial service provider. UTC urges the Commission to consider the above points in coming to its decision in this proceeding.

Pursuant to Section 1.1206 of the Commission's Rules and Regulations, 47 C.F.R. § 1.1206, a copy of this letter is being filed with the Office of the Secretary. If there are any questions concerning this matter, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jill M. Lyon", with a stylized flourish at the end.

Jill M. Lyon

Cc: Hon. Kathleen Abernathy  
Hon. Michael Copps  
Hon. Kevin Martin  
Hon. Jonathan Adelstein  
John Muleta, Chief  
Ed Thomas, Chief

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<sup>4</sup> UTC also notes CTIA's valid point that no service rules exist for a nationwide CMRS license, necessitating time to create them; thus, there is no reason to grant Nextel's request for an immediate license. See, CTIA *ex parte* Notice submitted June 23, 2004.